Downloaded via the EU tax law app / web

????????? ???????

??????? ??? ??????????? (????? ?????)

??? 14?? ??????? 2017 (*)

«???????????? ????????? – ????? ????????????? ????? (???) – ?????? 2006/112/?? – ????? 138, ?????????? 2, ???????? ?? – ???????????? ????????? ??? ??? ???? ??? ????????????? ?????????? ???? ?????????? ?????????? ????? – ??????? ??? ?????????? ??? ?????? ????? ?????????? – ????????? ?????????? ??? ?????? ????? ?????????? – ???????? ???????????? – ???? ????? ??? ?????? – ??????? ?????????? ??? ??????»

???? ??????? C?26/16,

?? ?????????? ?????? ????????????? ????????? ??????? ??? ?????? 267 ????, ??? ??????? ?? Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa – CAAD) [?????????? ?????????? ?????????? ???????? (?????? ?????????? ?????????? ?????????), ??????????] ?? ??????? ??? 30?? ????????? 2015, ? ????? ???????? ??? ?????????? ???? 18 ?????????? 2016, ??? ??????? ??? ?????

Santogal M-Comércio e Reparação de Automóveis Lda

????

Autoridade Tributária e Aduaneira,

?? ?????????? (????? ?????),

?????????? ??? ???? E. Juhász, ??????? ????????, C. Vajda ??? K. Jürimäe (????????), ????????,

??????? ???????????: P. Mengozzi

??????????: A. Calot Escobar

??????? ????? ??? ??????? ??????????,

?????????? ????? ??? ???????????? ??? ????????:

– ? Santogal M-Comércio e Reparação de Automóveis Lda, ?????????????? ??? ??? B. Botelho Antunes ??? ??? M. J. Mendonça, advogados,

– ? ?????????? ????????, ?????????????? ??? ???? L. Inez Fernandes, R. Campos Laires ??? M. Figueiredo,

– ? ????????? ????????, ?????????????? ??? ??? A. Caeiros ??? ??? L. Lozano Palacios,

???? ?????? ??? ?????? ?????????? ??? ???????? ??? ????????? ??? ???? ?? ?????????? ??? 1?? ??????????? 2017,

??????? ??? ????????

???????

1 ? ?????? ????????????? ????????? ????? ??? ???????? ??? ?????? 138, ?????????? 2, ???????? ??, ??? ??????? 2006/112/?? ??? ??????????, ??? 28?? ????????? 2006, ??????? ?? ?? ????? ??????? ????? ????????????? ????? (?? 2006, L 347, ?. 1, ??? ????: ?????? ??? ??? ???).

2 ? ?????? ???? ?????????? ??? ??????? ???????? ?????? ??? Santogal M-Comércio e Reparação de Automóveis Lda (??? ????: Santogal) ??? ??? Autoridade Tributária e Aduaneira (??????????? ??? ??????????? ?????, ??????????) ??????? ?? ??? ?????? ??? ?? ???? ????? ?? ????????? ??? ?????, ?? ????????????? ???????? ???? ??????????? ??????????? ?????, ??? ??? ???? ????????????? ????? (???).

?? ?????? ???????

?? ?????? ??? ??????

3 ? ??????????? ????? 11 ??? ??????? ??? ??? ??? ???? ?? ????:

«???? ?? ???????? ??? ?? ???? ??????????? ????????, ????? ?????? ??????? ?? ????????????? ??? ????? ???? ??????????, ????? ??? ??????????? ??? ??? ???? ????? ??? ?? ???? ?????? ?????, ?? ????????????? ?????????? ??? ???????? ???? ?? ?????? ????????????????? ??? ??????????????? ??? ????? ? ?? ?????????? ???? ???? ?????? ??????? ????? ??? ????????? ????????????? ??????? ???????? ?? ?????????? ??? ?????????? ??????????? ??????????? ????? ?? ?????? ????????????????? ???? ??????? ? ??????????????? ? ?? ??????????? ???? ???? ??????????, ???? ??? ????? ??? ?? ??????? ?????, ???????? ?????????? ?????????, ????????? ?? ??????????? ?????????? ??????????? ??? ??????????? ?????? ??? ?????? ?????.»

4 ?? ????? 2 ??? ?? ??? ??????? ?????? ?? ????:

«1. ???? ??? ?????????? ?? ????????? ???????:

[...]

?) ?? ?? ???????? ?????? ????????????? ?????????? ??????, ??? ????????????????? ??? ?????? ???? ??????? ??????:

[...]

ii) ???? ????????? ??? ?????????? ?????????? ????, ??? ?????????? ???? ???? ? ??? ?????? ??????? ?? ?????????? ???? ????, ??? ?????? ?? ?????? ?????????? ??? ?????????? ?? ??? ?? ???? ?? ????? 3, ?????????? 1, ? ??? ????????? ???? ??????? ?? ?????????? ???? ????,

[...]».

5 ?? ????? 3 ??? ?? ???? ??????? ?????? ?? ????:

«1. ???? ?????????? ??? ??? ????????? ??? ?????? 2, ?????????? 1, ???????? ?), ?????? i), ?? ????????? ??????? ??? ?????????? ?? ???:

[…]

?) ?? ?????????????? ?????????? ??????, ????? ????? ??? ????????? ?) ??? [??? ??????] 4, ??? ??? ?????????? ?????????? ?????????? ????? ??? ????????? ??? ?????????? ?? ???????? ?????? ??????????, ?? ?????? ??????????????????? ??? ?????????? ???? ???? ??? ??? ??????? ??? ?????????, ??????? ? ?????????? ??? ????????????, ? ????? ???????? ??? ????? ???’ ??????? ???????? ??? ?????? ??? ???? ???????, ??? ?????????? ???? ???? ??? ???????????? ????? ?????????? ?????? ? ??????? ????????? ??? ??? ???????? ?????? ???????? ???????? ? ??? ?????? ??????? ?? ?????????? ???? ????.

[…]»

6 ?? ????? 20, ????? ??????, ??? ????? ??????? ???? ?? ????:

«??????? ?? “???????????? ???????? ??????” ? ???????? ??? ?????????? ?? ???????? ???????, ?? ??????, ?????? ???????? ????? ??? ??????????? ? ?????????? ???? ????????? ??? ??? ?????? ? ??? ??? ????????? ? ??? ??????? ??? ??????? ??? ?????????? ????, ?? ?????? ????? ???? ??? ?? ?????? ????? ??? ?? ????? ????????? ? ???????? ? ? ???????? ??? ??????.»

7 ?? ????? 131 ??? ??????? ??? ??? ???, ??? ?????????????? ??? ?????????????? «??????? ?????????» ???????? 1 ??? ?????? ??? IX, ? ?????? ????? ??? ????????? ??? ??? ???, ????????? ?? ????:

«?? ????????? ??? ??????????? ??? ???????? 2 ??? 9 ??????????? ?? ??? ????????? ????? […] ????????? [??? ??????? ??? ??????] ??? ?? ??? ??????????? ??? ?????????? ?? ????? ???? ??? ?? ??????????? ??? ???? ??? ???? ???????? ??? ?? ???? ????????? ??? ?? ??????????? ???? ?????????? ??????????, ??????????? ? ?????????.»

8 ?? ???????? 4 ??? ?????? IX ??? ?? ??? ??????? ????? ??? «????????? [??? ??????????] ?? ??? ?????????????? ???????». ?? ?,?? ????? ??? ????????? ??? ?????????? ??????, ?? ????? 138 ??? ??????? ?????? ?? ????:

«1. ?? ????? ???? ?????????? ??? ??? ???? ??? ?????????? ?????? ?? ????? ???????????? ? ??????????? ????? ??? ?????????? ??????? ???? ???? ????? ??? [??????] ??? ??? ?????? ? ??? ????????? ? ??? ???? ??????? ??? ??????? ??? ?????????? ????, ?????? ?? ?????????? ????? ??????????????????? ??? ????? ?????????? ???? ???? ? ??? ?????? ??????? ?? ?????????? ???? ???? ??? ??????? ?? ???? ??? ???????? ?? ?????? ????? ?????????? ??? ?? ?????? ?????????? ??? ????????? ? ??? ????????? ??? ??????.

2. ????? ??? ??? ?????????? ??? ?????????? 1, ?? ????? ???? ?????????? ??? ????????? ???????:

?) ??? ?????????? ?????????? ?????????? ????? ?? ????? ???????????? ? ??????????? ????? ??? ?????????? ??????? ???? ???? ????? ??? [??????] ???? ??? ????????, ??? ??? ?????? ? ??? ????????? ? ??? ???? ??????? ??? ??????? ??? ?????????? ????, ?? ?????? ??????????????????? ???? ??????????? ???? ???? ? ???? ?????? ??????? ?? ?????????? ???? ????, ??? ?????? ?? ????????????? ?????????? ?????? ??? ?????????? ???? ??? ?? ???? ?? ????? 3, ?????????? 1, ? ???? ?????????? ???? ??????? ?? ?????????? ???? ?????

[...]».

?? ??????????? ??????

9 ?? Regime do IVA das Transações Intracomunitárias (???????? ??? ??? ????????????? ??????????, ??? ????: RITI) ????????? ??? ??????????? ?????? ???? ??????? ??? ??????? ??? ??? ??? ??????? ?? ??? ????????????? ??????????.

10 ???? ?? ????? 14, ???????? b, ??? RITI, ?? ????????? ?? ?? ????? 1, ???????? e, ??? RITI, ?? ?????????????????? ??? ??????????? ??????? ?? ???????? ?????? ?????????? ??????????? ??????????? _____, ?? _____ ????????????? ? ??????????? ??? ??? ?????? ? ??? ????????? ? ??? ???? ??????? ??? ??????? ??? ?????????? ????, ??? ?? ?????? ?????? ???? ????????? ? ?????? _____ ????????????? ? ???? ??? ???????? ??? ?? ???? ?????? _____, ????????????? ??? ??? ???.

? ??????? ??? ?????? _____ ??? ?? ??????????? ?????????

11 ? Santogal _____ ???????? ??????? ??? _____ ????????????? ???????? ??????????? ???????? ???? ??????????.

12 ?? ????????? ??? ??????? ???? 26 ?????????? 2010, ? Santogal ??????, ?????? _____ 447 665 ????, ??? ?????????? _____ ?? _____ ???? ???????? ??????????? ??? ?? Mercedes-Benz Portugal SA ??? ?? _____ ???? ???????? ??? ??????????? ?????? _____ ??????????? ?????????? ??? 25?? _____ 2009.

13 ???? ??? ??????, ? ?????????, ?????????? ???????, ????????? ?? Santogal ??? ???????? ?? _____ ??? ????????? ??? _____ ???? ???????, ???? _____ ?????? ??? ???? ?????????????, ??? ??? ???? ??? ??????? ?? ?????????? ?? _____ ???? ??????? ????????????? ? _____ ?? ????????, ?? ?? ???????? ???? ???? ??????? ?????? ??? ?? ??????? ?? ??????? _____ ??????????. ? ????????? ???????? ??? Santogal ??? ???????? ??? ?????? ??????? ?????????? ????????? (???), ??? ??????? ??????? ???? 2 _____ 2008 ??? ?? Ministério del Interior, Dirección General de la Policia y de la Guardia Civil– Comunidad Tui-Valencia (????????? ??????????, ?????? ????????? ?????????? ??? ??????????? – _____ _____ Tui-Valencia, ???????) ??? ???????? ??? ??????? ??? ??? ???????? ?????? ????????? ??? ??? ?? ??? ?????? ??????? ?????????? ?????????, _____ ??? ????????? ??? ??????????? ??????????? ???. ? ????????? ??? _____ ?????? ? ????????? ???? ??? ?????? ??? ????????? ?? ?????? ??? _____ ???????? ?? ??? 2 _____ 2008 ???????.

14 _____ ??? ???????? _____, ? Santogal ??????? ??? ? ?????? ??????????? ??? ??? ??? ???’ ????????? ??? ?????? 14, ???????? b, ??? RITI. ???????, ??? ?????????? ??? ???? ??????????.

15 ?? _____ ??????????? ???? ??????? ?? ?????? ??????? ????????.

16 ???? ??? ??????? ??? ???????? ???? ??????? ?????? ???? ???????, ? ????????? ????????? ??? Santogal, ??????? ????????? ???, ??? ??????? ???? ?????????? ??? ??????? ??? ???????, ????, ??????, ??? ???????????? ???????? ??????? ?? _____ ???? ??????? ???? 11 ??????????? 2010 ???, ????????, ??? ???????????? ??????????? ???? ??????? ??????? ???? 18 ??????????? 2010. ?? ??????? ???? ????????????, ??? _____ ??????????? ????????? ??? ???????? ??? ??? ????????? ???? ?? ?? ????????? ??? _____ ???? ??????? ???? ??? ?????? ???? ?? ?? ????????? ??? ??????????? ??? ??????? ??? 2?? _____ 2008, ???????? «??????????» _____ ??????????? ? _____ ?? _____ ???? 17

??????????? 2011. ????? ??? ????????? ?? ????? ??????? ?? ?????? ??????????, ???? ?? ???????? ??????, ? ?????????? ????? ??????????? ??????????? ?? ??? ????????? ??????????, ? ????? ??????? ???????? ?????????? ??????? ??? ??????? ??? ????? ??? ??????????, ???????? ?? ????????? ?? ??????? ??? ?????. ?????? ????? ??????????? ?????? ?? ?????????? ???? ?? ??????? ??? ??? ????? ?? ?????? ??????? ???? ???? ???????.

17 ??????? ????????? ?? ????? ????????? ? Santogal ??? ?????????? ??? 2011 ???? ??????? ??? ?????????? ??? 25?? ????? 2009, ? Mercedes-Benz Portugal ???????, ???? 3 ??????? 2011, ?????????????? ?????????? ????????? ?? ??? ????? ??????? ??? ??????? ??? ?? ???? ?????????? ???? ??? ????????? ??? ????????. ?? ???????? ??????????? ????? ?????????? ?? ??????? ??? ?????????? ??? 25?? ????? 2009.

18 ?? ??????? ??? 24?? ????????? 2013, ? Direção de Serviços Antifraude Aduaneira (????????? ????????? ??? ??? ??????????? ??? ??????????? ??????, ??????????) ????????? ???? Direção de Finanças de Lisboa (????????? ??????????? ????????? ??????????, ??????????) ?? ???????? ??? ??????????? ??? ??????????? ??? ??? ?????? ??? ???????? ???. ? ?? ??? ????????? ????????? ?????? ????? ??? ? ????????? ??????? ???? ??????????, ???? ??? ???? ??????????? ?? ?????????? ????????. ????????, ?? ???????? ???????? ??????? ??????????, ?? ????????? ????? ??????????? ??? ? ????????? ??? ??????????? ?? ???????? ???????? ???? ?? ???????? ??? 2010 ??? ???????? ???? ???????? ?????? ????? ??????????? ??? ?????? ????.

19 ?????????, ? Santogal ?????????? ?? ?????? ????????? ?????? ??? ??? ??? ??? ?????????? ??? 2010. ??? ??????? ????, ? ?????????? ??? ?????????? ???? ???????? ?????? ? ????? ???????? ??? ?????????? ??? ? ?????? ??? ???????? ??? ???????? ???? ???????? ??? ?????? 14, ???????? b, ??? RITI ????? ? ????????? ??? ??????? ???? ??????? ??? ??? ??????? ???? ????????????. ????????? ??????? ???, ??????? ?? ??? ?????? ????????? ???, ? ????????? ??????? ??????????? ?????? ??????????? ???????, ? ?????? ???? ????????? ??? ??? 2001, ??? ??? ???? ???????? ??? ???? ? ??????????.

20 ??????? ??? ??????? ?????, ???? 14 ????????? 2014, ? ?????????? ??? ?????????? ???? ??????? ????????????? ????? ???????????? ??? ??? ?? ???? ??? 89 533 ????, ????? ??? ????? ???????????? ???????????????? ????? ??? ?? ??????? ???????? ?????? 12?? ??????? 2010 ??? 20?? ????????? 2014, ??? ?? ???? ??? 15 914,80 ????. ? Santogal ???????? ?? ???? ???? ??? ????????? ??? 2014.

21 ? Santogal ????????? ??????? ??? ????????? ??????????, ???????? ??? ??????? ??? ?? ??? ??????? ????? ??? ??? ???????? ???????????. ?? ??????????? ??? ???????? ??????? ??? ??????????? ????? ??????????, ?????? _____, ???? ??????? ??????????? ??? ????????? ??? ?????? 1, ???????? e, ??? ??? ?????? 14, ???????? b, ??? RITI, ??? ????? ????????? ? ?????????? ??? ?????????? ????, ???? ?? ????? 138, ?????????? 2, ??? ??????? ??? ??? ???, ??? ??????? ????? ??????????. ?????????? ?????? ??? ????? ??????????? ??? ???????? ?? ???? ??? ??? ??? ???????? ?? ?????????? ???? ????.

22 ???? ?????? ???????????? ????????, ?? ?????? ?????????? ????????, ????????, ????????? ??????? ?? ??? ???? ???????? ??? ???????? ???? ??? ????? ??? ???????? ??? ???????? ???? ????? ???? ????????. ??????????, ?? ?????? ?????????? ??????????? ??? ? ??????? ??????? ??? ???????? ??? ?????????? ???? ???????. ??????, ??? ???? ?????????? ??? ????? ??????? ???? ?????????? ???? ??? ????? ??? ?? ???? ????????. ???????, ? ??????????? ??????? ??? ????????? ??????????? ?????????? ??? ???????? ??????????? ???? ??????? ?? ??? ???????? ??? ??? ??? ???????? ???? ??????? ???? ??????? ?? ??? ???? ??? ???????? ???? ?? ???????? ??? ??????????? ?????? ??????????. ?????? ???

???????????? ??? ? ????? ??? ??????????? ?????? ??????????? ?????? ???? ?? ???????????? ??? ?? ???????? ??????.

23 ??????, ?? ?????? ?????????? ??????????? ??? ??? ???????????? ??? ? Santogal ???????????? ?? ??? ???????? ??????????? ?? ?????????? ? ???????? ??? ??? ??? ??? ?????? ??? ????????. ????????, ?????? ??? ??? ?? ????????????? ??????? ??? ??????????? ???????? ???????? ??? ? Santogal ???????? ??? ??? ?????? ??? ???????????? ???????? ??? ??? ???. ??????????? ??? ???? ?? ???????????? ???? ?? ??????????? ???????? ???????? ????????? ?? ???? ??? ???????? ??? ???????? ??????????? ?? ???????? ??? ????????? ??? 25?? ????? 2009 ??? ??? ?? ??? 24 ???????? 2013 ??????? ??? ??????????? ???????? ??? ??? ???????????? ??? ??????????? ?????? ???????? ?? ???????? ??????????? ???? ?????? ? Santogal ??? ???? ????????.

24 _____, ??????????? ???? ??????? ??? 7?? ????????? 2010, R. (C?285/09, EU:C:2010:742), ?? ?????? ????????? ?????? ??? ? ????????? ??? ??????????? ??? ?????? _____ ??? ???????? ??? ????????? ???? ??????????? ??????? ??? ???????.

25 ??’ _____ ??? ????????, ?? Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa – CAAD) [????????? ????????? ??????????? ???????? (?????? ????????? ??????????? ????????), ?????????] ???????? ?? ????????? ?? ????????? ??? ?? ???????? ??? ????????? ?? ???????? ??????????? ????????:

«1) ??????????? ?? _____ 138, ????????? 2, ???????? [?]?, ??? ??????? ??? ??? ??? ?? ??????? ??? ??????? ??????? [???? _____ ???] ????[??] 1, ???????? e, ??? 14, ???????? b, ??? RITI ?? ?????? ?????? ?? ?????????, ??? ??? ???????? ??? ??? ??? ??? ?? ???????? ?????? ????????? ??????????? ??????????? _____ ?? _____ ??????????? ??? ??? ???????? ??? ?? ?????? ?????? ?? ???? ?????? _____, ? ??????? ?? _____ ????????????? ? ?? ???? ??? ???????? ??? ??? ?????? _____ ?????????;

2) ??????????? ?? _____ 138, ????????? 2, ???????? [?]?, ??? ??????? ??? ??? ??? ??? ?? ???????? ??? ???????? ??? ?? ?????? _____ ??? ?? _____ ???????? ? ???????? ?? ???????? ???? _____ ?? ???????? ????????? ????????? ???? ??????????? ???? ??????? ???? ??? ??? ????????? ????????? _____ ??????????? ????????? ????????, ???????? ??? ?? [????????] ????????? ???????? [...];

3) ??????????? ?? _____ 138, ????????? 2, ???????? [?]?, ??? ??????? ??? ??? ??? ???? ??????? ??? ??????????? ???????? ??? ??? ???? ?????? ??? ??????????? ??????????? _____, ?? ???????? ???? _____ ??? ???? ????????? ??? ???? _____ ? ??? ? _____ ??? ????????? ??????????? ?????? ??????????? ??? ??????? ??? ???? ????????????? [??? ?? ???????? ??????] ??????, ???? ??? ???? ????????? ? ???????? ?? ????????? ??? ???? ??? ?????? ?????? ??? ????????? _____;

4) ??????????? ?? _____ 138, ????????? 2, ???????? [?]?, ??? ??????? ??? ??? ??? ??? ?? _____ ??? ???????? ???????, ??? ????????????? ??? ??? ????????? ??? ????????????? ??????????? ???? ??????? ??? ??????????? ???????? ??? ??? ???? ?????? ??? ??????????? ??????????? _____ ?? _____ ??????????? ?? ???? ?????? _____, ?? ???????? ???? _____:

– ? ??????? ????????? ??? ??????, ???? ??? ??? ????????, ??? ???????? ??? ?????? _____ ????????? ??? ??? ??????????? ??????? ??? ????????? ??? ??? ???? ???????? ??? ?? ???? ?????? _____ ??????? ??????? ????????? ????????, ?? ??? ??????????? ?? ???? ???????? _____ ??? ?? ???? ??????? ?? ?? ???????? ?? ?? ???????? ??? ? ???????

??????????? ??? ?????

– ?? ????????????? ?????, ? ??????? ??????????? ???? ?????? ??????? ??? ??????????? ??? ?? ????????? ?????????? ???? ?????????? ?? ??????? ?????? ??? ?????? ????? ?????????? ??? ??? ??? ?????????? ??? ?????? ???? ?????????? ????? ???????????

– ??? ????????????? ??? ? ??????? ??????????? ?? ??? ????????? ??????????? ?? ?????????? ? ???????? ??? ????

– ?? ??????????? ????????? ??? ????????? ??????????? ???? ??? ????????? ??? ??????????? ??????????? ??? ???????? ????? ??? ???????? ??? ??????? ? ???????;»

??? ??? ????????????? ??????????

??? ??? ??????????

26 ? ??????????? ????????? ??????????? ??? ?? ??????????? ????????? ????? ?????????? ??? ????? ??????.

27 ??????, ? ??????????? ????????? ??????????? ??? ?? ??????????? ????????, ???? ????? ?????????? ???? ??????? ???? ??????????, ??????? ?? ????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ???, ?? ????? ??? ????? ??????? ??? ??????? ??? ???????? ??? ?????? ?????. ?? ??????? ??? ??? ??? ?? ???? ??? ????????? ??????????? ????????? ?? ???? ??????????? ???????? ???? ????? ????????? ??? ? ??????? ??????? ???? ???? ??? ?????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ??? ??? ??? ????????? ??? ?? ??? ??????????? ????????? ??????????? ???? ??????? ???? ?????????? ??? ??????? ?? ???????? ??? ??????? ????????, ??????????? ????? ??? ??????????? ??????? ??? ?????????? ??????? ??? ??? ????????? ??? ????????? ??? ???? ????? ???? ??? ??? ??????? ??? ??????????? ????.

28 ???????????? ??? ?? ??????? ???, ??? ??????? ???????, ??? ?????? ?????????? ????????? ??????????? ??????? ??????????? ?? ????????? ????????? ??? ??????? ??? ?????? ??? ????????? ?? ?????????? ?? ???????? ?? ???? ??? ?? ??????????? ???????? ??? ?????? ?? ??? ????? ??????? ??? ??? ???????? ??? ????????? ??? ?????? ???? ????????, ??????? ??? ?? ??? ????????? ??? ??????? ????? ????? ??? ????????. ???????, ??? ?????????? ????????? ?? ????????, ??? ?? ?????? ??? ????????? ??? ??? ??????? ?? ?????? ??????????, ??? ????? ??? ?? ???????? ??? ????????? ???? ??????????, ?? ???????? ??? ??????? ??? ?????? ??? ??????? ????????, ??????????? ????? ??? ??????????? ??? ???????? (??., ??’ ????? ??? ??????, ????????? ??? 21?? ??????? 2016, New Valmar, C?15/15, EU:C:2016:464, ????? 29, ??? ??? 29?? ??????????? 2016, Essent Belgium, C?492/14, EU:C:2016:732, ????? 43 ??? ???? ??????????? ????????).

29 ?? ??????????, ???? ????????? ? ??????? ??????????? ??? ?????? 21 ??? 23 ??? ????????? ???, ??? ?? ???????? ??? ????????? ???? ?????????? ????????? ????? ??? ?? ????????? ??? ??????? ??????????? ??????? ??? ???????? ??? ?????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ???, ???? ?? ??????? ??? ?? ?????? ?????????? ?????????? ??????????, ???? ??????? ????, ??? ????? 138, ?????????? 2, ???????? ??, ??? ?? ??? ???????. ???????, ?? ?? ???? ?????????? ???????? ?? ?????? ???? ?? ??????????? ???????? ??? ????? ????????? ???? ?? ???? ???????.

30 ????????, ? ??????????? ????????? ?????? ??? ? ?????? ??? ???????????

??????????? ??? ???????? ??? ?????? ????? ????????? ??????????? ??? ??????????, ????? ??? ??? ????????? ?????????.

31 ???? ????? ????????? ??? ??????????, ?? ???? ?? ???????? ??? ???????? ??? ??????? ??? ?????? ????????? ??? ???? ???????? ?? ?????? ??????????, ????? ??? ??????????? ??? ??????????? ???????? ?? ????? ??????????? ?? ???? ??? ?????? ??? ??? ???????? ??? ?????? ??? ??????? ?? ??????? ?? ??????????, ?????? ???????? ??????????. ?? ?????????? ??????? ?? ??????? ?? ????????? ??? ?????????? ??? ???? ???????? ?????? ?????????? ????? ???? ????????? ???????? ??? ? ????????? ???????? ??? ??????? ??? ?????? ??? ???? ????? ????? ?? ?? ???????? ? ?? ?????????? ??? ???????? ??? ?????? ?????, ???? ?? ???????? ????? ?????????? ?????? ? ???? ?? ?????????? ??? ???? ??? ??????? ??? ?? ?????????? ??? ?????? ???????? ??? ????? ???????? ??????????? ?? ????? ??????? ???????? ??? ????????? ??? ??? ????? ????????? (??????? ??? 18?? ?????????? 2014, Schoenimport «Italmoda» Mariano Previti ?.??., C?131/13, C?163/13 ??? C?164/13, EU:C:2014:2455, ????? 31 ??? ???? ??????????? ?????????).

32 ?? ??????????, ????????????? ??? ? ????????? ??? ??????????? ???????? ??? ?? ?????? ?????????? ????? ???? ?? ???????? ??? ?????????? ?? ?????????? ?? ????????? ????????? ??? ????????? ??? ??? ????? ?????????.

33 ??????, ? ??????????? ????????? ??????????? ??? ?? ??????????? ????????? ????? ????????, ??’ ?? ??????? ?? ?????? ?????????? ??????, ???? ??? ??????????, ???? ?????????? ??? ? ??????? ???? ????? ???? ????? ???????????? ??? ?????? ??????? ??????????, ????? ?? ?????? ?? ???????? ??????????? ??? ?????????? ??? ?? ????? ?? ?????????? ??? ????????? ????.

34 ???? ????????? ? ??????? ??????????? ??? ?????? 26 ??? ????????? ???, ??? ?????? ???????? ??? ????????? ???? ?????????? ??? ?????? ?? ???????? ?? ?????????? ??? ? ?? ???? ????? ???????????? ?? ???????? ??????????? ??? ?????????? ??? ??? ???????????? ?????????. ?? ???? ?????????, ?????????? ?? ????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ??? ????????? ?? ?? ??????????? ??? ???????? ??? ?????? ?????, ??? ????? ?? ???? ????? ??????????? ?? ?? ??????? ???? ? ?????? ????????? ??? ??? ??? ???? ??????? ? ????? ????? ?????????? ?????????? ????.

35 ????????, ?? ??????????? ????????? ????? ?????????.

??? ??? ?????? ??????????

36 ?? ?? ????? ??????? ???, ?? ?????? ?????????? ?????, ???’ ??????, ?? ???????????? ?? ?? ????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ??? ?????? ?? ?????????? ??? ??? ?????? ??? ?????????? ?? ??????????? ??? ??????? ????????, ?? ?????????? ??? ??? ???????? ??? ??? ???? ???? ?????????????? ?????????? ??????????? ??????????? ?????, ?? ?? ????? ? ??????? ?? ?????????? ???? ???? ?????????????? ? ?? ???? ??? ???????? ??? ??? ?????? ????? ?????????? ??? ?? ???? ??????????? ?????.

37 ????????, ???????????? ??? ?? ??????? ???? ?????????? ??? ??????? ??? ??????????? ??? ???????????? ??????? ??????????? ?????????? ??? ???, ??? ??????? ??? ??? ?????? 91/680/??? ??? ??????????, ??? 16?? ?????????? 1991, ??? ?? ?????????? ??? ?????? ?????????? ????? ???????????? ????? ??? ??? ??????????, ?????? ??? ?????????? ??? ??????????? ???????, ??? ??????? 77/388/??? (?? 1991, L 376, ?. 1). ?? ???????? ???? ?????????? ???? ????????? ???? ???? ??????????? ?????? ??? ?????, ?????? ??? ?????????????? ????????? ??????, ? ????? ????????? ?? ???????? ???

??????????? ?????? ??? ?????? ????? ????? ??? ?????? ???????????????? ? ?????? ?????????? ??? ??????????? ?????? (??????? ??? 18?? ????????? 2010, X, C?84/09, EU:C:2010:693, ????? 22 ??? ???? ??????????? ?????????).

38 ?? ?? ??????, ? ?????????? ??? ????????, ??????, ???? ????????, ?? ?????? ??? ??????? ?????? ??????????, ??? ?????????? ??? ??????????? ??? ???????????? ???????? ? ????????, ????????????? ??? ?? ???????? ????????? ? ?????????? ??? ???????????? ????? ??? ??????? ?????? ????? ??? ???????, ???, ????????, ??? ??????????, ?? ?????? ??? ??????? ?????? ???????, ??? ????????????? ????????? ???????? ??? ???? ?????????? ??? ??????????? ???????? ??? ?????? ????? (??????? ??? 18?? ????????? 2010, X, C?84/09, EU:C:2010:693, ????? 23 ??? ???? ??????????? ?????????).

39 ???? ?????, ??????????, ???? ??????? ??? ??????? ?? ?????????? ??? ?????????? ??????????? ??????????? ?????, ??? ??? ??????????? ????? 11 ??? ??????? ??? ??? ??? ????????? ??? ?? ??????? ????? ????? ?? ?????, ????? ??? ????????? ??? ??????????? ???????????, ??? ??????? ??? ??????????? ??? ??????????? ?????? ??? ?????? ????? ?? ?????? ????????? ?? ?????????? ???? ??? ????????? ??????????? ??????????? (??????? ??? 18?? ????????? 2010, X, C?84/09, EU:C:2010:693, ????? 24).

40 ????? ??? ???????? ??? ??? ?????? ????? ?????? ?? ??????????????? ? ???????? ??? ?????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ???.

41 ? ??????? ???? ????????? ??? ????????? ??? ?????? ????? ?? ??????????? ??? ??? ???? ??? ?????????? ??????????? ??????????? ????? ?? ?????? ??????? ??? ??????????? ??????????? ??? ???????????? ?? ????? (??., ???’ ????????, ??????? ??? 9?? ????????? 2014, Traum, C?492/13, EU:C:2014:2267, ????? 46) ???? ????? ??????????? (??., ???’ ????????, ??????? ??? 6?? ??????????? 2012, Mecsek-Gabona, C?273/11, EU:C:2012:547, ????? 59).

42 ????? ??? ?? ???? ????????, ?? ????? ???? ??????????? ??? ?????????? ??????????? ??????????? ????? ?? ????? ???????????? ? ??????????? ????? ??? ??????????? ??????? ???? ???? ????? ??? ?????? ???? ??? ????????, ??? ??? ?????? ? ??? ????????? ? ??? ???? ??????? ??? ??????? ??? ?????????? ????, ?? ?????? ???????????????? ???? ??????????? ???? ???? ? ???? ?????? ??????? ?? ?????????? ???? ????, ??? ?????? ?? ????????????? ?????????? ?????? ??? ?????????? ???? ??? ?? ???? ?? ????? 3, ?????????? 1, ??? ??????? ??? ??? ???, ? ???? ??????????? ???? ??????? ?? ?????????? ???? ????.

43 ????, ???? ????????? ? ??????? ??????????? ??? ?????? 38 ??? 39 ??? ????????? ???, ? ???????? ??? ????????????? ?????????? ???? ??????????? ??????????? ????? ????? ????? ?????? ?? ???????? ?? ???????? ?? ?????? ?? ?????????? ???? ???? ??????????? ???? ????????? ??? ? ??????? ??????????? ??? ?? ?????????? ???? ???????? ? ??????????? ?? ???? ?????? ????? ??? ???, ??????? ??? ????????? ? ??? ????????? ?????, ?? ?? ???? ????? ???????????? ?????? ??? ?? ?????? ??? ??????? ?????? ?????????? (??., ???’ ????????, ????????? ??? 18?? ????????? 2010, X, C?84/09, EU:C:2010:693, ????? 27, ??? ??? 6?? ??????????? 2012, Mecsek-Gabona, C?273/11, EU:C:2012:547, ????? 31 ??? ???? ??????????? ?????????).

44 ?????????, ????? ??? ????????? ??? ?????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ???, ? ???????? ??? ??? ???? ??? ????????????? ?????????? ???? ?????????? ?????????? ????? ??? ????????? ??? ??? ?????????? ?? ????? ? ??????? ????????????? ? ?? ???? ??? ???????? ??? ??? ?????? ????? ??????????.

45 ? ??????? ??????? ??????????? ?? ????????? ??????? ???? ????????? ??? ????????? ????? ????? ??? ??? ??????? ??? ????? ??????? ??? ?????????? ??? ???????????? ??????? ?????????? ?????????? ??? ???, ???? ????????????? ???? ??????? 37 ??? 39 ??? ???????? ?????????. ??????????, ?? ???????????? ??? ??? ???? ??? ???????????? ???????? ????? ??? ???? ????? ? ??????? ?? ?????????? ?????????? ???? ??? ????? ????????????? ? ??? ???? ??? ???????? ??? ??? ?????? ?????????? ??? ?????????? ??? ????????? ??? ?????????? ??????????? ??? ????????, ?? ?????? ????? ?????????? ?? ???????? ?? ????????? ??? ????? ? ?????, ?????? ?????????? ?? ?? ???? ???????????, ?? ???? ?????????? ?? ???????????? ???????? ??? ?????? ????? ??????????. ?? ?????????? ?? ???? ? ????? ??????????, ??? ?????????? ???? ???? ??? ?????????? ????????????.

46 ? ???????? ???? ?????? ????????????? ??? ?? ????????? ??? ?????????? ??? ??? ??????????? ???? ??????? ? ????? ????? ?????????? ?????????? ???? ?? ????????????? ?????????.

47 ?????????, ????????? ??? ????????????? ???? ??????? ???????, ?? ?????????? ???? ?????? ???, ??? ??? ??????????? ??? ?? «????????????? ?????????», ????? ???????? ?? ?????????????? ??? ???????? ???????? ???? ??? ????????????? ?????????? ????????? ??? ?????? ??????? ??? ?? ????????? ?? ?? ????????? ????? ????? ???????????? ??? ?? ?????? ??? ??????? ?????? ?????????? ???, ?? ????????? ?????????? ??????????, ?? ???? ?????? ????? ?? ?????????????? ? ?????? ????? ???. ????????? ??????? ??????? ?? ????? ???????, ????? ??? ?? ????????? ??? ????????? ??? ??????, ?????, ? ????? ??????????? ??? ???????? ??????? ???, ? ????? ????????? ??? ?????????? ??? ? ?????? ? ? ??????? ?????? ??? ?????????? ?? ?? ?????? ????? ?????????? ? ???? ?????? ????? (??., ??’ ????? ??? ??????, ??????? ??? 18?? ????????? 2010, X, C?84/09, EU:C:2010:693, ??????? 41 ??? 45 ??? 50).

48 ??? ??? ?? ??? ????????? ????????? ??? ??? ??? ? ????? ????????? ??? ?????????? ??? ?????????? ?????????? ???? ??????? ??????? ???????? ??? ???? ??????? ??? ????????? ?????????? ????? ??? ?????? ?????????? ? ????? ??????? ?????? ??? ?????????? ?????, ???? ??? ?????? ?? ????????? ??? ????? ??? ??? ??????????? ?? «???????????? ????????» ??? ??? ???????? ???? ??????? ?????????? ??? ??? ???? ??? ??? ??? ??????????? ??? ?????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ???.

49 ???????, ?????????? ???????????? ? ????????? ??? ?????????? ??? ?????? ????? ?????????? ??? ??????? ?? ????????? ???? ??? ????? 131 ??? ??????? ??? ??? ???.

50 ??????????, ????? ??? ?????? ??? ?? ????? ???? ??????????, ??????? ?? ?? ??????? ????, ??? ??????????? ??? ??? ?????? ??????????? ??? ?????????????? ??????????, ???? ?????????? ??? ????? ??? ????? ????????? ??? ?? ???? ????????? ??? ???? ???????? ???? ??????????? ???????????, ???????????? ??? ??????????, ???? ????, ???? ??? ?????? ??? ???????? ????, ???????? ?? ?????? ??? ??????? ????? ??? ??????? ??? ????????? ????? ??? ??????? ?????? ??? ??????, ?????? ??? ?????? ?????????????? ?????????? ?? ????? ??? ????????? ??????? ??? ??? ?????????????, ????? ??? ? ???? ??? ??????????? ???????????? (??., ??' ????? ??? ??????, ??????? ??? 18?? ????????? 2010, X, C?84/09, EU:C:2010:693, ??????? 35 ??? 37).

51 ? ?? ???????? ???? ??? ????????? ??? ?????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ??? ????? ??? ???? ????? ? ??????? ??? ???????? ??? ?????? ????? ?????????? ?????????? ???? ???????? ??? ??????????? ??????????? ??? ?????? ?? ???????? ??? ???? ??? ??????????? ????????????. ????????, ???? ????????? ??? ?? ????? 45 ??? ???????? ?????????, ??? ?????? ?????? ?????? ?? ????????? ??? ??????? ?????? ??????????.

52 ??? ?? ??? ??? ????????????, ??? ????? ??????? ?????? ?? ????? ? ???????? ??? ?? ????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ??? ?????????? ?? ??????????? ??? ??????? ?????????, ?? ?????????? ??? ??? ???????? ??? ??? ???? ???? ????????????? ?????????? ??????????? ??????????? ?????, ?? ?? ????? ? ??????? ?? ?????????? ???? ???? ????????????? ? ?? ???? ??? ???????? ??? ??? ?????? ????? ?????????? ??? ?? ???? ??????????? ?????.

??? ??? ???????? ??????????

53 ?? ?? ??????? ???????, ?? ?????? ?????????? ?????, ???' ??????, ?? ???????????? ?? ?? ????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ??? ?????? ?? ?????????? ??? ??? ?????? ??? ? ???????? ??? ??? ???? ??? ?????????? ???? ??????????? ??????????? ????? ?????? ?? ?? ?????????? ??? ?????? ????? ?????????? ???? ?? ?????????? ???? ???? ???? ????? ????????? ???? ????? ??????????? ??? ?????? ????? ??????????.

54 ???? ????????? ??? ??? ???????? ??? ????? ???????, ?? ????? ???? ??????????? ?? ??????????? ??? ??? ???? ??? ?????????? ??????????? ??????????? ????? ?????? ?????????? ?? ??????????? ??????????? ??? ???????????? ??????????? ??? ????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ??? ??? ????????????? ???? ??????? 42 ??? 43 ??? ???????? ?????????.

55 ? ?????????? ??? ??????????? ??????????? ????? ??? ?????? ????? ?????????? ??? ????????????? ?????? ??? ??????????? ?????.

56 ????????, ??? ????? ?????? ????????? ??? ??? ???? ??? ?????? ????? ?????????? ????? ??? ???? ????? ? ????? ??????????? ??? ????????? ??? ?????? ????? ?????????? ?????, ???? ? ??????? ???? ????? ???? ?????????? ????? ???????????, ????????? ????? ? ????? ?????????? ??? ???????? ?????? ?????.

57 ??? ????? ??? ? ???????? ??? ? ??????????? ????????? ??????????? ?? ??????? ??? ? ?????? ??????? ?????? ??????????? ??? ?????? ????? ?????????? ??? ??????? ?????????? ???????????? ??? ??????? ?????? ??????? ??????? ??? ??????? ??????????? ?????, ?????? ?? ????????? ???, ???? ????????? ? ??????? ??????????? ??? ?????? 55 ??? ????????? ???, ? ?????? ??????? ?????? ??? ???????? ????????? ??? ? ????? ???????

??????? ??? ?????????? ????? ????? ??? ??????? ?????? ??????????. ???? ????????? ??? ??? ?????? ????????????? ????????, ??? ?????? ????? ?????? ???????? ?? ?????????? ??? ??????? ?????? ??????? ????????, ?? ?????????? ??? ??????????, ?? ????? ??????? ?? ??????????? ? ?? ??????????? ??? ?? ???????? ????????? ?????? ??????????.

58 ??? ?????? ??????????? ???? ???????? ??? ????????? ??? ????? 51 ??? ???????? ????????, ?? ?????????? ??? ????????? ??? ????? 56 ??? ???????? ????????? ??? ?????????? ??? ?? ??????? ???, ??????? ??? ?????? 131 ??? ??????? ??? ??? ???, ?? ????? ???? ?????????? ??? ??????????? ??? ?? ??????????? ??? ???? ??? ???? ???????? ??? ?? ???? ????????? ??? ?? ??????????? ???? ?????????? ??????????, ?????????? ? ?????????.

59 ??? ?? ??? ??? ????????????, ??? ??????? ??????? ?????? ?? ????? ? ???????? ??? ?? ????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ??? ?????? ?? ?????????? ??? ??? ?????? ??? ? ???????? ??? ??? ???? ??? ?????????? ???? ?????????? ?????????? ????? ??? ?????? ?? ?? ?????????? ??? ?????? ????? ?????????? ????? ??? ???? ????? ?? ?????????? ???? ???? ???? ????? ????????? ???? ????? ?????????? ??? ?????? ????? ?????????.

??? ??? ?????? ??????????

60 ?? ?? ????? ???????, ?? ?????????? ?????, ???’ ??????, ?? ????????????? ?? ?? ????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ??? ?????????? ?? ?????????? ?? ??? ??????? ???? ?????? ???? ?????????? ?????????? ?????, ?? ????? ?????????? ??? ??? ????????? ?? ???? ?????? ????? ??? ??????????? ???? ??????????, ? ????????? ?? ????????? ??? ??? ???? ????????? ??? ??? ????????????? ??? ? ????????? ????? ?????????? ????? ??? ??? ? ??? ?????????? ? ????????? ?? ?????????? ??? ?????? ????? ?????????.

61 ???????, ?????????????, ????????, ???, ???? ????????? ??? ?? ????? 50 ??? ???????? ????????, ?? ????? ???? ???????? ?? ??????, ???? ?????????? ??? ??????????? ??? ??? ?????? ?????????? ??? ????????????? ?????????? ??????? ??? ?????? 131 ??? ??????? ??? ??? ???, ?????, ??? ????? ??? ????????? ???????, ??? ????????????? ??? ??? ?????????? ????????????.

62 ??????, ?? ?????????? ???? ?????? ??? ???? ?????? ?????????? ?? ????????? ??? ??????? ??? ??????????? ??? ??????????? ??? ??? ???????? ??? ????????? ??? ??? ???? ???? ????????????? ?????????, ???????????????? ??? ??? ??????????? ??????? ??? ?????????? ?? ????? ???? ??? ?? ??????????? ??? ???? ??? ???? ???????? ??? ????????? ??? ?? ??????????? ???? ?????????? ??????????, ?????????? ? ????????? (??., ??’ ????? ??? ??????, ??????? ??? 27?? ?????????? 2012, VSTR, C?587/10, EU:C:2012:592, ????? 43 ??? ???? ??????????? ?????????).

63 ?????, ?? ?????????????? ??????? ??? ??????? ?????????? ?????????? ???? ????? ????????? ?????????, ?????? ?????, ??????? ? ??? ??? ??? ??????? ????? ????? ?????? ?????????? ??? ??? ?? ????????? ???? ???? ??????, ??? ??? ????? ??? ??????? ?? ?????????? ??? ??????? ?? ?????? ??? ??? ?????? ???????, ?? ?????????? ?? ??? ????? ??????? ? ?????????????? ??????? ??? ?? ???? ??????, ??? ??????? ? ??????? ?????, ?? ??????? ??????????, ??? ?????? ?? ???????? ???????? ????????? ??? ??? ????? ??? ?? ????????? ?????????? ??????????? ???????? ???, ??? ??? ???? ????, ???? ?????????? ???????? ??’ ?,?? ???? ?????????????? ?? ???????? ??? ??????? ??? ????? (??., ??’ ????? ??? ??????, ??????? ??? 18?? ????????? 2010, X, C?84/09, EU:C:2010:693, ??????? 42 ??? 43).

64 ????????, ???? ?????????? ??? ????? 47 ??? ???????? ????????, ?????????? ?? ????? ??????? ? ???????????? ???? ??????? ? ????? ????? ?????????? ?????????? ???? ?? «????????????? ????????», ????? ???????? ?? ?????????????? ??? ???????? ???????? ???? ??? ????????????? ?????????? ????????? ??? ?????? ??????? ??? ??? ???????? ??? ???? ????? ?? ????????? ????? ????? ???????????? ??? ?? ?????? ??? ??????? ?????? ?????????? ???, ?? ????????? ?????????? ??????????, ?? ???? ?????? ????? ?? ?????????????? ? ?????? ????? ???.

65 ?? ????????? ??? ? ??????? ???? ?????????? ???????? ?? ????? ??????????? ?? ???????? ? ??? ????????, ??? ??? ????????, ??? ?????????? ?????????? ????? ?? ???? ?????? ????? ????? ??? ???, ???? ??? ????????, ?????????? ??? ??? ??? ?????? ??????? ??? ??? ?????? ????, ? ??????? ??? ?????? ?? ?????????? ?? ???????? ????? ???????? ???? ??? ??? ? ????? ??? ?????????? ????? ????? ??? ?????? ????? ?????????? ???? ???????? ??? ?????????? ????????, ????? ??? ???? ??? ?????? ?????? ??? ?????????? ?????? ??????????, ??????????, ??????? ????????? ??? ??? ??? ?????? ????? ??????????.

66 ??????????, ??????, ??’ ????? ??? ????????, ? ???????? ??? ?????? ??????????? ??? ?????????? ???o? ???? ??? ???? ??? ??????? ??? ??????? ??? ????? ? ??????? ????? ?? ???? ?? ???????? ???? ?????????? ????? ????????? ?????? ??? ?? ???????? ??? ??? ?????????? ???? ??? ????? ????? ? ??????? (??., ???’ ????????, ??????? ??? 16?? ?????????? 2010, Euro Tyre Holding, C?430/09, EU:C:2010:786, ????? 37).

67 ????????, ???? ?? ????????? ??? ??????????, ??? ?????? ?? ?????????? ???? ?????? ? ????????? ?? ???????? ?????????? ???????? ??? ?? ?????????? ??? ???????? ????????????? ????????? ??? ??????, ?????????? ?? ????? ???????????? ??? ?????????? ?????????? (??????? ??? 27?? ?????????? 2012, VSTR, C?587/10, EU:C:2012:592, ????? 55). ?? ?? ????????? ???? ? ???????? ??? ????????? ??? ??? ?????????? ????????? ??? ??????? ?????? ??????? ??????? ??? ?????????? ?????????? ????? ?? ???????? ??????? ??? ?? ?????????? ???? ?????? ??? ?????? ?????????. ??????????, ????? ?? ???????? ?? ????????? ???? ?????? ?? ????? ?? ????????? ??? ?????? ????????? ?????? ??????????, ? ????? ?? ???????? ?????????? ?? ????? ???? ??????? ????????? ??? ??? ??? ??? ?????????.

68 ??’ ????? ??? ????????, ????????? ???? ? ?????????????? ??? ????? 65 ??? ???????? ????????? ??? ?? ?????????? ??? ???? ??? ???? ???????? ??? ????????? ??? ??? ????.

69 ??? ?? ??? ??? ????????????, ??? ????? ??????? ?????? ?? ????? ? ???????? ??? ?? ????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ??? ?????????? ?? ?????????? ?? ??? ??????? ???? ?????? ???? ?????????? ?????????? ?????, ?? ?????

??????????? ??? ??? ????????? ?? ???? ?????? ????? ??? ??????????? ???? ??????????, ? ????????? ?? ????????? ??? ??? ???? ????????? ??? ??? ???????????? ??? ? ????????? ????? ??????????? ????? ??? ??? ? ??? ??????????? ? ????????? ?? ?????????? ??? ?????? ????? ??????????.

??? ??? ???????? ??????????

70 ?? ?? ??????? ???????, ?? ?????? ?????????? ?????, ???’ ??????, ?? ???????????? ?? ?? ????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ??? ??? ?? ????? ??? ????????? ???????, ??? ????????????? ??? ??? ?????????? ??? ?????????????? ??????????? ??????????? ?? ??????????? ?? ??? ??????? ???? ?????? ???? ??????????? ??????????? ?????, ?? ????? ??????????? ??? ??? ????????? ?? ???? ?????? ????? ??? ??????????? ???? ??????????, ? ????????? ?? ????????? ??? ??? ?? ????????? ???, ????????? ??? ??????????? ??? ???????, ? ??????? ????????? ?? ???? ??????????, ????? ?? ???????????? ?????????? ??? ?????? ???? ?? ???? ??????????.

71 ???????, ???????????? ??? ??? ?????????? ??? ?????? ??? ?????? ?? ?????????? ??? ??? ???????????? ?? ??????? ?????????? ??? ?? ???????? ???? ????? ??? ?????? ??????? ?? ????????? ??? ????? ??????????? ?? ????????? ??? ? ????? ??? ????????? ??? ???? ?? ?????????? ?? ????????? ??? ?? ??????????? (??????? ??? 6?? ??????????? 2012, Mecsek-Gabona, C?273/11, EU:C:2012:547, ????? 48 ??? ???? ??????????? ?????????). ???? ????????? ??? ? ???????????? ??????????? ???? ???? ??????? ? ?????? ?? ???????? ??? ? ????? ??? ?????????? ????????? ?? ??????????? ??? ????? ???????? ? ??????? ??? ??? ????? ??? ?? ????? ?? ????? ???????? ??????? ?? ????? ???? ?? ??? ????????, ??? ?????? ?? ??? ????????? ???????? ??? ??? ???? (??????? ??? 6?? ??????????? 2012, Mecsek-Gabona, C?273/11, EU:C:2012:547, ????? 54).

72 ??????????? ??? ?????? ?????????? ?? ???????????, ????? ????????? ?????????? ???? ??? ??????????? ????????? ??? ??????????? ??? ????????? ??? ?????? ?????, ???? ????? ? Santogal ???????? ?????????? ??? ????? ??? ?? ????? ??? ????????? ??????? ?? ?????????? ??? ??? ???? ??????????? ?? ????????? ??? ? ????? ??? ?????????? ??? ???? ?? ?????????? ?? ????????? ??? ?? ??????????? (??., ??’ ????? ??? ??????, ??????? ??? 6?? ??????????? 2012, Mecsek-Gabona, C?273/11, EU:C:2012:547, ????? 53). ?? ?????????? ??????? ?????? ?? ???????? ??? ?????? ?????????? ??? ?? ??????? ?? ?? ?????? ??? ?????? ??????????? ???????? ??? ??????? ?? ??? ???????????.

73 ????, ???????????? ???, ??? ??????? ?????????? ???????????? ??? ????????????? ????????????? ?????? ??? ????? ?????????? ?????????? ????, ? ??????? ??? ?????? ?? ???????? ???? ???? ??????????? ??? ??? ????????? ??????? ?? ????????? ?? ????? ?? ???? ?????? ????? ??? ??? ?????? ??? ?????. ?????????, ???? ????????? ? ??????? ??????????? ??? ?????? 63 ??? ????????? ???, ? ??????? ?????? ?? ??????? ?? ? ??????? ??? ????? ???????? ? ??????? ????????????? ??? ???????????? ???????? (??., ???’ ?????????, ??????? ??? 18?? ????????? 2010, X, C?84/09, EU:C:2010:693, ????? 47).

74 ???????????? ???, ????????? ??? ????????? ??? ????????????? ??? ??? ????????? ???? ?? ??????? ?????? ??? ???????, ???????? ??????? ?? ???????? ??? ? ??????? ??????? ???? ??????? ??? ??? ???? ?????? ???? ????????? ????????? ??????????? ?? ????????????? ???? ?? ??????? ???? ????? ???? ?????, ???? ??? ?? ?????? ???????? ?????? ???????????. ????? ?????? ???? ??? ????????? ??????????? ?? ??????? ???? ????? ? Santogal ???????? ??? ??????????? ????????? ??????????? ?? ????????? ??? ? ????? ??? ?????????? ??? ???? ?? ?????????? ?? ????????? ??? ?? ???????????. ???????, ?????? ?? ????????? ??? ? Santogal ?????? ?? ????????? ????????

????????, ??????, ???? ??? ????? ??? ???????? ???????? ???, ????????, ????????? ???, ??? ??????? ?????????? ???? ??????????? ??????????? ?????, ? ??????? ??? ?????? ?? ???????? ???????? ????????? ??? ??? ????? ??? ?? ????????? ??????????? ??????????? ???????? ???, ??? ??? ???? ????, ???? ?????????? ???????? ??’ ?,?? ???? ????????????? ?? ???????? ??? ??????? ??? ????? (??????? ??? 18?? ????????? 2010, X, C?84/09, EU:C:2010:693, ????? 43). ????????, ???? ??? ???????? ??? ????? ??????? ?? ??????????? ?? ?????? ??????????, ?????? ????? ?? ??????? ??, ????? ??? ????????? ??? ??????? ? ???????? ?? ????????, ? Santogal ???? ?? ???? ?? ???????? ??? ? ????????? ????? ??????????? ??????????? ???? ??? ???? ?? ????????? ???????? ??? ??? ? ??????? ???? ??????? ???????? ??????????? ???? ???????, ?????? ??? ???????? ?? ??????????? ?????????? ??????? ?? ??? ?????????? ??? ????????.

75 ????? ??? ??????????? ??? ??????, ?????? ?????? ?? ?????? ????? ? ??????????? ??? ??????????? ?????. ???? ????? ?? ??????????, ?? ????? ?? ?????? ?? ??????????? ?? ?????? ??????????, ? Santogal ?? ??????? ??????? ??????????? ?? ????? ??? ????????? ??? ???????? ??????? ??? ??? ???? ??? ?? ??????? ???? ?? ??????????? ??? ?? ?????? ????? ??? ??? ??????? ????, ???????????? ??? ? ???? ??? ????????? ??????? ??????????? ?? ?????????? ??? ??????? ??????, ?? ????? ??????? ??????? ?? ??????? ?? ????? ?????????? ? ??????? ?? ??????????? ???????? ???? ??????????? ??? ??????????? ????????? ??? ??? ????, ?? ?????????? ?? ??? ??????? ??? ?? ???? ?????? ?? ????????? ??? ??? ??? ??? ???????? ????, ???? ??????????? ??? ????? ???????? ? ??????? ??? ??? ????? ? ??????? ??? ??????? ???? ???????? ?? ???????? (??., ???’ ????????, ??????? ??? 27?? ??????????? 2007, Teleos ?.??., C?409/04, EU:C:2007:548, ????? 50).

76 ??? ????? ??? ?? ?????? ?????????? ?????????? ???? ???? ??? ?????????? ??? ?????????????? ???????????, ???????????? ???, ???? ????? ????????? ??? ??????????, ???????? ?????????? ??? ????? ????? ????? ???? ?? ??????? ????? ??????? ?????????? ???? ??????????? ??????? ??????????, ?????????? ???? ???????????? ???????????? (??????? ??? 9?? ??????? 2015, Salomie ??? Oltean, C?183/14, EU:C:2015:454, ????? 44 ??? ???? ??????????? ?????????). ??????, ? ??????????? ???? ???? ??? ?????? ?? ??????????? ????????????? ??????????? ??? ???? ????? ?? ????????? ??????????? ??? ????????????? ??? ?? ???????? ??????????? (??., ???’ ????????, ??????? ??? 29?? ???????? 2004, Gemeente Leusden ??? Holin Groep, C?487/01 ??? C?7/02, EU:C:2004:263, ????? 77).

77 ??????? ??? ???????, ??? ??????? ??????? ?????? ?? ????? ? ???????? ??? ?? ????? 138, ?????????? 2, ???????? ??, ??? ??????? ??? ??? ??? ??? ?? ????? ??? ???????? ???????, ??? ????????????? ??? ??? ?????????? ??? ??????????????? ??????????? ??????????? ?? ??????????? ?? ??? ??????? ???? ?????? ???? ??????????? ??????????? ?????, ?? ????? ??????????? ??? ??? ????????? ?? ???? ?????? ????? ??? ??????????? ???? ??????????, ? ????????? ?? ????????? ??? ??? ?? ????????? ??????????? ??? ????? ???????? ? ???????, ????? ?? ????????????, ????? ????????????? ????????, ??? ? ?? ???? ??????? ??????? ? ?????? ?? ???????? ??? ? ????? ????????? ?? ??????????? ??? ????? ???????? ? ??????? ??? ??? ????? ??? ?? ????? ?? ????? ???????? ??????? ?? ????? ???? ?? ???????? ?? ????????? ??? ??? ??????????? ????. ??????????? ??? ?????? ?????????? ?? ??????????? ?? ????????? ?????? ????????? ????? ????????? ?????????? ???? ??? ??????????? ????????? ??? ??????????? ??? ????????? ??? ?????? _____.

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78 ????????? ??? ? ??????? ?????????? ???? ?? ???? ???? ????????? ??? ?????? _____

??? ????????? ????????????? ??? ??????? ??????? ??? ??????? ??????????, ?' ???? ??????????? ?? ????????? ??? ??? ?????????? ??????. ?? ????? ??? ????? ??????????? ???? ???????? ??????????? ??? ??????????, ???? ??? ?? ??? ????????, ??? ??????????.

??? ???? ?????? ??????, ?? ?????????? (????? _____) ???????????:

1) **?? _____ 138, ?????????? 2, ???????? ??, ??? ??????? 2006/112/?? ??? ??????????, ??? 28?? ????????? 2006, ??????? ?? ?? ????? ??????? _____ ???????????? _____, ?????????? ?? ??????????? ??? ??????? ?????????, ?? ?????????? ??? ??? ???????? ??? ??? ???? ???? ????????????? ?????????? ??????????? ??????????? _____, ?? ?? _____ ? ??????? ?? ?????????? ???? ???? ????????????? ? ?? ???? ??? ???????? ??? ??? ?????? _____ ?????????? ??? ?? ???? ??????????? _____.**

2) **?? _____ 138, ?????????? 2, ???????? ??, ??? ??????? 2006/112 ?????? ?? ?????????? ??? ??? ?????? ??? ? ???????? ??? ??? ???? ??? ?????????? ???? ??????????? ??????????? _____ ??? ?????? ?? ?? ?????????? ??? ?????? _____ ?????????? _____ ??? ???? _____ ?? ?????????? ???? ???? ???? _____ ????????? ???? _____ ??????????? ??? ?????? _____ ??????????.**

3) **?? _____ 138, ?????????? 2, ???????? ??, ??? ??????? 2006/112 ?????????? ?? ??????????? ?? ??? ??????? ???? ?????? ???? ??????????? ??????????? _____, ?? _____ ??????????? ??? ??? ????????? ?? ???? ?????? _____ ??? ??????????? ???? ??????????, ? ????????? ?? ????????? ??? ???? ???????????? _____ ???? ????????? ??? ??? ???????????? ??? ? ????????? _____ ??????????? _____ ??? ??? ? ?? ???? _____ ??????????? ? ????????? ?? ?????????? ??? ?????? _____ ??????????.**

4) **?? _____ 138, ?????????? 2, ???????? ??, ??? ??????? 2006/112 ??? ?? _____ ??? ????????? ???????, ??? ?????????????? ??? ??? ?????????? ??? ?????????????? ??????????? ??????????? ?? ??????????? ?? ??? ??????? ???? ?????? ???? ??????????? ??????????? _____, ?? _____ ??????????? ??? ??? ????????? ?? ???? ?????? _____ ??? ??????????? ???? ??????????, ? ????????? ?? ????????? ??? ???? ???????????? _____ ?? ????????? ??????????? ??? _____ ???????? ? ???????, _____ ?? ????????????, _____ ?????????????? ????????, ??? ? ?? ???? ??????? ??????? ? ?????? ?? ???????? ??? ? _____ ????????? ?? ??????????? ??? _____ ???????? ? ??????? ??? ??? _____ ??? ?? _____ ?? _____ ???????? ??????? ?? _____ ???? ?? ???????? ?? ????????? ??? ??? ??????????? ????. ??????????? ??? ?????? ?????????? ?? ??????????? ?? ????????? ?????? ????????? _____ ????????? ?????????? ???? ??? ??????????? ????????? ??? ??????????? ??? ????????? ??? ?????? _____.**

(?????????)

* ?????? ???????????: ? ???????????.